STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
450 N STREET, SACRAMENTO, CALIFORNIA
PO BOX 942879, SACRAMENTO, CALIFORNIA 94279-0092
(916) 324-1825 • FAX (916) 322-4530
www.boe.ca.gov

February 8, 2011

Dear Interested Party:

Staff has reviewed comments received in response to our January 6, 2011 interested parties meeting regarding the proposed amendments to Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*. After considering the comments and information provided to date, staff is recommending more amendments to the regulations.

Enclosed is the *Second Discussion Paper* on this subject. This document provides the background, a discussion of the issue, and explains staff's recommendation in detail.

A second interested parties meeting is scheduled for **February 17, 2011 at 10:00 a.m. in Room 122** to discuss the proposed amendments to Regulations 1807 and 1828. If you are unable to attend the meeting but would like to provide input for discussion, please feel free to write to me at the above address or send a fax to (916) 322-4530 before the February 17, 2011 meeting. If you are aware of other persons that may be interested in attending the meeting or presenting their comments, please feel free to provide them with a copy of the enclosed material and extend an invitation to the meeting. If you plan to attend the meeting, or would like to participate via teleconference, I would appreciate it if you would let staff know by contacting Ms. Lynn Whitaker at (916) 324-8483 or by e-mail at Lynn.Whitaker@boe.ca.gov prior to February 15, 2011. This will allow staff to make alternative arrangements should the expected attendance exceed the maximum capacity of Room 122 and to arrange for teleconferencing.

Any comments you may wish to submit subsequent to the February 17, 2011 meeting must be received by **March 4, 2011**. They should be submitted in writing to the above address. After considering all comments, staff will complete a formal issue paper on the proposed amendments to Regulations 1807 and 1828 for discussion at the **Business Taxes Committee meeting** scheduled for April 26, 2011. Copies of the formal issue paper will be mailed to you approximately ten days prior to this meeting. Your attendance at the April Business Taxes Committee meeting is welcomed. The meeting is scheduled for **9:30 a.m.** in Room 121 at 450 N Street, Sacramento, California.

Please be aware that a copy of the material you submit may be provided to other interested parties. Therefore, please ensure your comments do not contain confidential information.

We look forward to your comments and suggestions. Should you have any questions, please feel free to contact Ms. Leila Hellmuth, Supervisor, Business Taxes Committee Team at (916) 322-5271.

Sincerely,

Susanne Buehler, Chief
Tax Policy Division
Sales and Use Tax Department

SB: llw

Enclosures

cc: (all with enclosures)
Honorable Jerome E. Horton, Chairman, Fourth District
Honorable Michelle Steel, Vice Chair, Third District
Honorable Betty T. Yee, Member, First District (MIC 71)
Senator George Runner (Ret.), Member, Second District
Honorable John Chiang, State Controller, c/o Ms. Marcy Jo Mandel (via e-mail)

(Via E-mail)
Mr. Robert Thomas, Board Member's Office, Fourth District
Mr. Tim Treichelt, Board Member's Office, Third District
Mr. Neil Shah, Board Member's Office, Third District
Mr. Alan LoFaso, Board Member's Office, First District
Ms. Mengjun He, Board Member's Office, First District
Mr. Lee Williams, Board Member's Office, Second District
Ms. Natasha Ralston Ratcliff, State Controller's Office
Ms. Kristine Cazadd
Mr. Jeffrey L. McGuire
Mr. Jeff Vest
Mr. David Levine
Mr. Randy Ferris
Mr. Bradley Heller
Mr. Cary Huxsoll
Mr. Scott Claremon
Ms. Trecia Nienow
Ms. Carole Ruwart
Ms. Larry Michelli
Mr. Tom Hopkins
Mr. Leonardo Vega
Ms. Claudia Madrigal
Mr. Todd Gilman
Ms. Laureen Simpson
Mr. Robert Ingenito Jr.
Mr. Bill Benson
Ms. Freda Orendt
Mr. Stephen Rudd
Mr. Kevin Hanks
Mr. James Kuhl
Mr. Geoffrey E. Lyle
Ms. Leila Hellmuth
Ms. Lynn Whitaker
Ms. Judi Pierce

SECOND DISCUSSION PAPER

Proposal to Amend Regulation 1807*, Petitions for Reallocation of Local Tax*, and Regulation 1828*, Petitions for Distribution or Redistribution of Transactions and Use Tax*

I. Issue

Should Regulations 1807, *Petitions for Reallocation of Local Tax*, and 1828, *Petitions for Distribution or Redistribution of Transactions and Use Tax*, be revised to change the processes for handling petitions from jurisdictions and districts?

II. Staff Recommendation

After review of interested party submissions and discussion at the first interested party meeting, staff agrees with a number of the revisions suggested by the interested parties and is recommending additional revisions. Staff recommends revising Regulations 1807 and 1828 as follows:

- Explain that a 30-day extension can be requested when a jurisdiction is responding to a notice from the Local Revenue Allocation Unit (suggested by staff),
- Add a provision in the supplemental decision process to allow the petitioner or notified jurisdiction to request that the Allocation Group issue its supplemental decision within 90 days (concept suggested by Mr. Johan Klehs; modified by staff),
- Provide that the Allocation Group will transfer a petition file to the Appeals Division within 30 days of receiving an objection to the Allocation Group's supplemental decision (suggested by Mr. Klehs and concurred by the HdL Companies and Mr. Joseph Vinatieri),
- Notify potentially affected jurisdictions at the Appeals Division level, rather than only at the current Board hearing level (suggested by Mr. Klehs and concurred by the HdL Companies), and
- Allow participants 30 days to provide additional information following the appeals conference, and allow the other participants 30 days to respond to that information (suggested by Mr. Klehs; modified by staff).

These revisions are shown in proposed revisions to Regulation 1807 (Exhibit 1).

Staff also recommends revising the BOE Compliance Policy and Procedure Manual (CPPM) to:

- Include a general ordering rule regarding the scheduling of appeals conferences (suggested by MuniServices), and
- Notify participants when the final submission is received following the appeals conference (suggested by Mr. Klehs and concurred by the HdL Companies and Mr. Vinatieri).

III. Other Alternatives Considered

In addition to the revisions recommended by staff, alternative revisions to Regulations 1807 and 1828 to impose or tighten timeframes in the local tax appeals process were suggested by Mr. Johan Klehs and the HdL Companies (Exhibits 3 and 4 respectively). Further suggestions to

improve the petition process outside the regulations were submitted by MuniServices, LLC (Exhibit 5). In addition, Mr. Joseph Vinatieri and Mr. Robert Cendejas submitted comments disagreeing with the proposals to hold allocations in trust and require disclosure of revenue sharing agreements (Exhibits 6 and Exhibit 7 respectively).

IV. Background

Regulation 1807 provides the process for reviewing requests by jurisdictions for investigation of suspected misallocation of local taxes imposed under the Bradley-Burns Uniform Local Sales and Use Tax Law. The similar process for reviewing distributions of taxes imposed under the Transactions and Use Tax Law (commonly called "district taxes") is provided in Regulation 1828. These regulations were substantially revised in 2008 to streamline the appeals processes. Currently, the local and district tax appeals processes involve review by the Allocation Group (AG), the Appeals Division, and Board Members.

As general background information, section 7204.3 provides that the Board of Equalization (BOE) charge jurisdictions for the services we provide in administering the jurisdictions' tax ordinance. These costs are deducted from the jurisdictions' quarterly tax distributions. Similar provisions with regard to charges for administering district taxes are included in section 7273.

At the September 15, 2010, Business Taxes Committee meeting, Mr. Klehs presented the Committee with his suggestions for improving the local tax appeals process. The Committee referred the suggested revisions to the interested parties process for further review and discussion. Staff met with interested parties on January 6, 2011, to discuss the proposed revisions to Regulations 1807 and 1828. The Business Taxes Committee is scheduled to discuss this issue at the April 26, 2011 Committee meeting.

V. Discussion

For convenience of discussion, this paper refers to proposed revisions to local tax procedures in Regulation 1807. However, any proposed revisions to the corresponding processes in Regulation 1807 will also be indicated as proposed revisions to Regulation 1828 when the issue paper is presented to the Board.

Improve Efficiency

Many of the suggestions to revise Regulations 1807 focused on improving efficiency in the sense of reducing the amount of time it takes to process a local tax appeal to final administrative resolution. Staff agrees that the process for reviewing local tax appeals should be efficient; however, staff also believes that it is important to keep in mind that the purpose of the appeals process is to ensure that local tax is correctly allocated and that the investigation and verification of a local tax petition can be as complicated, or more so, than a general sales and use tax audit or claim for refund. With regard to the time it takes to complete an audit, Regulation 1698.5, *Audit Procedures*, provides a flexible goal for the timely completion of general sales and use tax audits in subdivision (c)(7):

SECOND DISCUSSION PAPER

Proposal to Amend Regulation 1807*, Petitions for Reallocation of Local Tax*, and Regulation 1828*, Petitions for Distribution or Redistribution of Transactions and Use Tax*

> "…to facilitate the timely and efficient completion of an audit, Board staff shall develop an audit plan that strives for the completion of the audit within a two-year timeframe commencing with the date of the opening conference and ending with the date of the exit conference. Most audits will be completed in a much shorter timeframe and others may require a period beyond two years."

This two-year timeframe does not include the appeal of an audit; the completion of an audit is only the first step in a process that involves several levels of review and corresponds most closely to the initial investigation phase of a local tax appeal. Once a Notice of Determination in a sales and use tax audit is issued, it is appealed under the Board's Rules for Tax Appeals (Cal. Code of Regs., tit. 18, § 5000 et seq.), which do not establish time requirements for the completion of the entire appeals process. Thus, while we acknowledge that the local tax appeals process can seem lengthy, like an appeal of a sales and use tax audit, the time it takes to investigate and resolve a local tax allocation petition varies depending on the complexity of the issues and the availability of records.

The completeness of information and records provided to Board staff by the petitioner can affect how quickly local tax appeals are resolved. For example, appeals are resolved faster when the specific reasons and evidence why the taxpayer's allocation is questioned are easily verified by Board staff, no contrary evidence emerges, and the basis of Board staff's position on whether a misallocation has occurred does not involve legal or policy issues on which the jurisdictions affected by the appeal disagree. As discussed in staff's Initial Discussion Paper, investigations of local tax cases can take longer than audits of otherwise similar complexity because it may be more difficult for staff to get information from the reporting taxpayer. That is, local tax disputes only involve reallocation of reported amounts; the taxpayer holding the records is not disputing its own assessment or supporting its own claim for refund and thus may place a relatively low priority on responding to requests to provide records. In addition, local tax appeals that present more complex factual, legal, or policy issues generally take longer to resolve, both in the investigation and decision phases, in part because the several levels of review are provided under Regulation 1807 to ensure that the local tax is correctly allocated.

Exhibit 2 provides an overview illustrating how local tax petitions are processed at the AG, Appeals Division, and Board Member levels. The exhibit also notes the main revisions proposed by staff and interested parties. Staff's suggested changes to each level are discussed below.

AG Level. Staff notes that most local tax petitions are investigated and resolved at the AG level. Last year, the AG received an average of over 500 petitions a month and cleared about the same number.[1] As explained in the Initial Discussion Paper, only 11 petitions (involving four taxpayers) have reached the level of Appeals Division review since 2009.

To establish better control over the AG process time, Mr. Klehs and the HdL Companies suggested adding a requirement that the AG's supplemental decision be completed in 60 or 90 days. Staff does not believe that adding a specific time limit to this step in the AG process would

[1] The AG received 6651 petitions in FY 09/10 (6651÷12 = 554). The AG cleared 6311 petitions in FY 09/10 (6311 ÷ 12 = 526).

result in a better process. We are concerned that to meet the deadline, staff will not always have enough time to investigate the new facts and arguments that are frequently presented as the basis for objecting to the AG's previous decision. Limitations on staff's ability to fully investigate new facts and arguments would likely result in more denied petitions and more objections to those denials. However, after considering interested parties' comments, staff does agree to add a provision in the supplemental decision process to allow the petitioner or notified jurisdiction to request after six months that the AG issue its supplemental decision within 90 days from receiving the request, with the requesting jurisdiction understanding the limitations it may be placing on the AG's investigation and analysis (Exhibit 1, new subdivision (b)(8)). This provision would be similar to the mechanism currently in subdivision (b)(3), which provides that if the AG does not issue a decision within six months, the petitioner may request that the AG issue a decision, and the AG will issue a decision within 90 days.

Appeals Division Level. Staff agrees with the idea of bringing potentially affected jurisdictions into the appeals process before the Board hearing. After considering written comments submitted by Mr. Klehs and the HdL Companies, as well as discussion at the interested parties meeting, staff agrees that the Appeals Division level is an appropriate level to bring potentially affected jurisdictions into the appeals process. Staff recommends that subdivision (c)(2) be revised to require that notice of an appeals conference be mailed to the petitioner, all notified jurisdictions, and any other jurisdiction that would be substantially affected if the petition were granted.

Staff also agrees with the proposal to amend subdivision (c)(3) to allow appeals conference participants 30 days after the conference to provide additional information, and allow 30 days for the other participants to respond to the information provided. Staff does not recommend any further revisions regarding post-conference submissions. Although staff agrees that participants should provide all information timely and completely to keep this step in the process from dragging out, the Appeals Division's overall objective is to base its Decision and Recommendation (D&R) on all available information and arguments. While it is not the primary responsibility of the Appeals Division to perform an investigation, as a practical matter, new facts and arguments frequently emerge during the course of preparing for the appeals conference and during the conference itself. This is even more likely to happen if, as suggested above, potentially affected jurisdictions are brought into the process for the first time at the appeals conference. Thus, if the Appeals Division prohibited or disregarded information or arguments received after the conference, objections to the resulting D&R would be more likely, and the disallowed arguments and information would be presented for the first time at the Board hearing. Staff believes that only fully vetted unresolved legal and factual issues should be presented to the Board Members.

Staff does not recommend any further revisions to subdivision (c). Although the timeframes for several of the steps are open-ended at the Appeals Division level, they are already more restrictive than the appeals process for general sales and use tax audits and claims for refund. (Under the Board's Rules for Tax Appeals, Regulation 5265, *Issuance and Contents of a Decision and Recommendation*, allows the Chief Counsel to continually extend the time for staff to prepare the D&R.) Considering that most local tax petitions are resolved at the AG level, it is

fair to say that the typical appeal that reaches the Appeals Division involves complicated issues that are often more difficult to analyze than the issues in a typical local tax petition.

Staff does not recommend prescribing additional time limits as it does not believe they will result in the best review and handling of cases. As at the AG level, we are concerned that to meet a deadline, the Appeals Division may not have enough time to obtain all necessary information or analysis from the parties in order to perform a complete and accurate analysis in its D&R. This, in turn, could result in more decisions being appealed to the Board Hearing level with facts and arguments being presented for the first time. Again, the purpose of this process is to fully vet issues and possibly resolve them without having to move on to the next step of the appeals process.

Prescribing additional time limits also does not take into account delays in setting conferences that result from proposed amendments to local tax regulations being sent to the Business Taxes Committee, or spikes in inventory volume such as were experienced when a large number of petitions were simultaneously sent to the Appeals Division (e.g., the Mass Appeals cases). Staff is unaware of any problems with setting appeals conferences as the Appeals Division has pending only four cases ready to set for conference, or of any problems with the Appeals Division issuing its D&Rs. As noted in the Initial Discussion Paper, since September 2008, the Appeals Division has closed 1,327 petitions (involving 520 taxpayers), including 99.6% of the Mass Appeals cases.

Board Hearing Level. Staff does not recommend any regulatory changes to subdivision (d). Staff is not aware of significant delays in scheduling local tax appeal cases for Board hearing; jurisdictions are notified at least 75 days prior to the hearing as provided in the Rules for Tax Appeals.

Clarify Procedures

In addition to proposals designed to improve efficiency, staff and interested parties have made several suggestions to clarify existing procedures.

Local Revenue Allocation Unit (LRAU) Notifications. When LRAU sends a notification letter regarding the misallocation of local tax, a jurisdiction may object to that notification by filing a petition with the AG within 30 days. LRAU notifications include copies of all the documentation supporting the reallocation, making it easier for jurisdictions to review the issue and decide whether to file an objection; however, some jurisdictions need more time to determine whether they wish to file an objection. Staff recommends formalizing in Regulation 1807, LRAU's existing policy to give jurisdictions a 30-day extension to respond to an LRAU notification regarding the misallocation of local tax (Exhibit 1, subdivision (a)(3)). At the interested parties meeting, it was suggested that rather than requesting an extension, LRAU should just allow jurisdictions 60 days to respond to misallocation notification letters. However, staff believes the existing policy of having jurisdictions request extensions as needed is better because jurisdictions do not always need or ask for additional time, and if there is no objection or request for extension, fund transfers can be processed more quickly.

Allocation Group. While staff does not agree that it is necessary for the AG to maintain a universal case log or provide a status report that is accessible to local jurisdictions on a real-time basis, we acknowledge that the AG can improve the consistency of its responses to jurisdictions' status inquiries. The AG staff maintains case notes for specific actions taken on petitions (e.g., "1/25/11 telephone call to Mr. Smith, bookkeeper; left voice mail message"); staff has been reminded that it should provide that specific information when a jurisdiction requests the status of a petition. In addition, staff recognizes that it should contact the petitioner more quickly when the information on the petition appears incomplete or difficult to understand, or if it has been unable to reach the contact person provided by the petitioner. We believe these are workload issues, and do not require any regulatory or manual change.

Additional workload and procedural changes related to investigations at the AG level were recommended by MuniServices (Exhibit 6). Staff agrees that local tax investigations handled by the AG staff and district field staff should be handled uniformly and be given adequate attention, including any follow-ups; however, staff is not aware that field investigations and audits are problem areas, or that they are handled in a substantially different way from general audit investigations. Staff has noted these suggestions and will consider them in future revisions to the various affected procedure manuals.

Appeals Division. In general, appeals conferences are scheduled in the order they are received by the Appeals Division. There are situations, however, when a conference on a later-received file may be held first (such as when the facts are fully developed and the issues are clearly stated, or when efficiencies would result from multiple conferences being held close in time to each other). As explained in the Initial Discussion Paper, staff will recommend that the CPPM be revised to include a general ordering rule. Staff will also add a provision to the CPPM to explain that the Appeals Division staff notifies all the conference participants when the final submission is received following the appeals conference.

<u>Holding Distributions In Suspense</u>

In his submission, Mr. Klehs recommended that Regulation 1807 be revised to require that any disputed local tax monies be placed in trust until the BOE local tax appeals process is exhausted. Mr. Cendejas submitted comments disagreeing with this proposal, noting the hardships cities would face if distributions were tied up for routine disputes. Mr. Cendejas also expressed his belief that only the Board Members themselves should be able to take such steps and only after a public hearing allowing the affected city to show why such action is unnecessary. The submission from Mr. Vinatieri stated his view that staff's failure to make distributions is illegal, and that if funds are to be withheld, there should be legislative authorization to do so. The final comments on this issue were from the HdL Companies, who suggested that Board staff could develop criteria for when distributions could be held.

After review of the submissions and discussions of the issue, staff does not recommend revisions to Regulation 1807 or to BOE procedure manuals to describe when distributions of local tax may be held in suspense. While staff has held distributions in the past, this action has so rarely been taken that we do not believe we could draft general rules that would provide useful guidance for

future situations. The fact that staff is only aware of two situations in the last 30 years shows that BOE has only held distributions when staff believed the uniqueness of the situation warranted such action. We think that staff must evaluate the facts and circumstances surrounding each case to determine if it is necessary to hold local tax distributions.

With regard to the suggestion that BOE sponsor legislation to pay interest to the winning jurisdiction in an allocation case on any held monies when a final decision has been made, staff would need direction from the Board Members to pursue legislation. If the Board Members made such a recommendation, staff notes that when BOE has held distributions, the funds have been placed in the local tax pooled money investment account. If legislation were passed to allow the appropriate jurisdiction to earn interest on held distributions, interest could be calculated based on the proportionate percentage of the total interest earned on the pooled money investment account.

Required Disclosure of Revenue Sharing Agreements

Mr. Klehs also recommended that Regulation 1807 be revised to require taxpayers to disclose the existence and terms of any revenue sharing agreements involving local tax distributions. Mr. Vinatieri expressed his belief that the disclosure of the terms of a revenue sharing agreement is irrelevant to the determination of whether a petition for reallocation is with or without basis. In his submission, Mr. Cendejas agreed that no regulatory change was needed and explained that such agreements can be obtained under the Public Records Act. The HdL Companies explained that where a revenue sharing agreement exists, it is an important component of the overall picture and helps ensure that the Board performs a thorough investigation. MuniServices stated that they are not convinced that regulatory changes are needed to address what appears to be a limited issue.

Staff does not believe Regulation 1807 should be revised to require taxpayers to disclose the existence and terms of any revenue sharing agreements involving local tax distributions. However, the existence and terms of an agreement can be important information when staff is investigating a suspected misallocation of local tax and should be provided to staff upon request. Staff believes a discussion of the issue could be included in its procedure manuals to explain what agreements are, the different types of agreements that staff has encountered, where records can be found, and how such an agreement should be viewed in light of the entire investigation.

VI. Summary

Staff continues to believe that the full benefits of the 2008 revisions to Regulations 1807 and 1828 have yet to be seen, that a number of issues raised by interested parties are mainly presented in aged cases, and that the number of aged cases will continue to be reduced as petitions that originated under the prior rules are resolved. While staff does not agree that the imposition of specific time limits at each step in the process is desirable, we believe that the revisions we have agreed to and included in our recommendation will improve the efficiency of the local tax appeals process and clarify current procedures.

SECOND DISCUSSION PAPER

Proposal to Amend Regulation 1807*, Petitions for Reallocation of Local Tax,* and Regulation 1828*, Petitions for Distribution or Redistribution of Transactions and Use Tax*

Interested parties are welcome to submit comments or suggestions on the issues discussed in this paper, and are invited to participate in the interested parties' meeting scheduled for February 17, 2011.

Prepared by the Tax Policy Division, Sales and Use Tax Department

Current as of 2/7/2011

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

(a) DEFINITIONS.

(1) LOCAL TAX. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) JURISDICTION. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification, or within a period of extension described below. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, or within a period of extension, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

The jurisdiction may request a 30-day extension to submit a written objection to a notification of misallocation from the Local Revenue Allocation Unit. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days and must be received by the Local Revenue Allocation Unit within 30 days of the date of mailing of its notification. Within five days of receipt of the request, the Local Revenue Allocation Unit will mail notification to the jurisdiction whether the request is granted or denied. If a timely request for an extension is submitted, the time for the jurisdiction to file a written objection is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the jurisdiction to submit a written objection to the notification of the Local Revenue Allocation Unit is further extended to the 60th day after the date of mailing of the notification of misallocation.

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and

includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group issue its decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision.

(8) If the Allocation Group does not issue a supplemental decision within six months of the date it receives a written timely objection to the decision of the Allocation Group, the petitioner may request that the Allocation Group issue its supplemental decision without regard to the status of its investigation. Within 90 days of receiving such a request, the Allocation Group will issue its supplemental decision based on the information in its possession.

(~~8~~9) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(~~9~~10) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(~~8~~9), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision.

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's

supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will, within 30 days of receipt of the objection, prepare the file and forward it to the Appeals Division. The petitioner, all notified jurisdictions, any other jurisdiction that would be substantially affected if the petition were granted, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(~~9~~10). If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. To make the conference most productive, each participant should submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference; however, relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15~~ 30 days after the appeals conference~~, or 30 days with sufficient justification,~~ to submit to the conference holder, with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed ~~15~~ 30 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.

(4) Within 90 days after the final submission authorized by subdivision (c)(3), the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to 90 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing

has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.

(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.

(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R or any SD&R. Such a request must state the basis for the jurisdiction's disagreement with the D&R or SD&R as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge.

(f) APPLICATION TO SECTION 6066.3 INQUIRIES.

The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to January 1, 2003 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.

This exhibit provides a general overview of the current local tax petition process. The callout boxes list the main suggested revisions to the process.

Allocation Group (AG) Level

Petition is received by AG

↓

AG investigates and issues a decision[1]

↓

No objection to AG decision received – decision is final

or

Objection received - AG considers the objection and issues a supplemental decision

Staff: If AG does not issue a supplemental decision within 6 months, the petitioner or notified jurisdiction may request AG to issue a decision; AG will issue a supplemental decision within 90 days.

Klehs: Establish a 90-day time limit to issue a supplemental decision.

HdL: Establish a 60 to 90-day time limit to issue a supplemental decision.

↓

No objection to supplemental decision received – decision is final

or

Objection received – AG sends file to Appeals

All: AG to transfer file within 30 days.

Klehs: Reduce allowed time to 60 days.

HdL: Reduce allowed time to 60 days, but allow staff to request a 30-day extension.

[1] If AG does not issue a decision within 6 months, the petitioner may request AG to issue a decision; AG will issue a decision within 90 days of the request.

Appeals Division (Appeals) Level

The petitioner, notified jurisdictions, and SUTD will be notified of the appeals conference at least 45 days before the conference

All: On petitions that were denied by AG, notify jurisdictions that would be substantially affected if the petition were granted.

Klehs and HdL: Require that Appeals schedule the appeals conference within 6 months of receiving file.

↓

Petitioner or notified jurisdiction may continue to investigate with AG and AG may issue a second supplemental decision

- If second supplemental decision issued and no objection is received – decision is final

or

- If second supplemental decision issued and an objection is filed, Appeals will schedule an appeals conference

Klehs and HdL: Establish a 60 or 90-day time limit for AG to issue a second supplemental decision.

Klehs: If an objection is filed, require the appeals conference be scheduled within 90 days.

↓

Appeals conference held.

- Participants may request up to 30 days to submit additional documentation
- Other participants who disagree with the additional information presented are allowed 15 days to submit arguments or evidence in response

All: Allow participants 30 days to submit additional documentation; allow the other participants 30 days to respond.

Klehs: After the allowed 45 days, do not allow additional responses, or allow Appeals to request additional information.

HdL: After the allowed 60 days, do not allow additional responses.

↓

Within 90 days of the appeals conference or final submission of additional information, Appeals will issue the D&R; the Chief Counsel may approve an additional 90 days to prepare the D&R upon request by Appeals

↓

Petitioner, notified jurisdiction, or SUTD may also appeal any D&R or Supplemental D&R (SD&R) by submitting a timely written Request for Reconsideration (RFR) to Appeals.

- If an SD&R is issued, the petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing within 60 days of the mailing date of the SD&R.

Klehs: Shorten the extension request to 30 days.

Klehs: Eliminate the RFR and SD&R process.

HdL: Tighten the standards for a RFR request.

↓

No request for Board hearing is timely received in response to a D&R or SD&R – Appeals decision is final

or

Request for Board hearing received in response to a D&R or SD&R

Board Hearing Level

Request for Board hearing received

Board Proceedings will send notification that a Board hearing is being scheduled to:

- SUTD,
- the petitioner,
- any notified jurisdiction,
- any other jurisdiction that would be substantially affected if the petition were granted, and
- the taxpayer(s) whose allocations are the subject of the petition

Notification of Board hearing is sent at least 75 days before the hearing.

Klehs: Require that either the hearing notice or a status report be issued within 90 days of the request for hearing.

JOHAN KLEHS & COMPANY, INC.
STRATEGY • GOVERNMENT RELATIONS • ADVOCACY

August 25, 2010

The Honorable Betty Yee, Chair
Board of Equalization
400 Capitol Mall, # 2580
Sacramento, CA 95814

Dear Board Member Yee:

On behalf of the City of Livermore, we thank you for your interest in beginning the process to amend "Sales and Use Tax Regulation 1807- Petitions For Reallocation Of Local Tax" in your capacity as Chair of the Board of Equalization (BOE) Business Taxes Committee.

We have enclosed a copy of Regulation 1807 with suggested changes which you may want to consider as a starting point as the Business Taxes Committee begins its deliberations. The suggested changes to Regulation 1807 are made within the following context:

1. The current Regulation 1807 process to reach a final decision is too long. In one case involving the City of Livermore and other jurisdictions, this "fast tracked case" has been going for almost two years with the date of knowledge going back to 2007. Another matter dates back to 1999. Your office may want to take an inventory of all tax allocation cases under consideration at the BOE. The BOE staff has been doing an excellent job in working with all affected parties in these cases. However, the staff is working within the guidelines provide by the current and past regulations. It seems that the current process is without adequate deadlines allowing certain parties to "game the regulation" resulting in needless delays before a final decision can ever be made. Neither affected local jurisdictions nor taxpayers should have to participate in a process that is longer than a legislative session or the amount of time a typical civil case takes in court—especially since BOE decisions are subject to judicial review in any event. The BOE may want to consider a process that takes no longer than one year.

2. In Regulation 1807, Section (b)(7), we are recommending that any disputed local tax monies be placed in a "trust" or similar account until a final decision has been reached by the BOE as to who might be legally entitled to the monies. The effect of such a trust account would force jurisdictions to finish participating in an allocation request since they would not have possession of

1415 L STREET, #620 • SACRAMENTO, CA 95814 P.O.BOX 1026 • SAN LEANDRO, CA 94577
TEL: (916) 551-1881 • FAX: (916) 444-7114 • EMAIL: JOHANKLEHS@COMCAST.NET

the funds. The jurisdictions would also not rely on monies that they may not be legally entitled to and lessen the burden of repaying those monies if an affected jurisdiction is at the losing end of an allocation case.

3. That the BOE sponsor legislation paying interest to the winning jurisdiction of an allocation case of any monies held in trust when a final decision has been made for all affected jurisdictions.

Hopefully, our comments will be part of the agenda when the Business Taxes Committee schedules this issue on September 15, 2010. We look forward to working with you on this issue.

Please feel free to contact me if we can be of any service to you in the future.

Sincerely,

JOHAN KLEHS

Enclosure As Stated

CC: Ms. Linda Barton, City of Livermore
Mr. John Pomidor, City of Livermore
Ms. Robin Sturdivant, HdL Companies

State of California

BOARD OF EQUALIZATION

SALES AND USE TAX REGULATIONS

Regulation 1807. PETITIONS FOR REALLOCATION OF LOCAL TAX.

Reference: Sections 7209 and 7223, Revenue and Taxation Code

(a) DEFINITIONS.

(1) LOCAL TAX. "Local tax" means a local sales and use tax adopted pursuant to Revenue and Taxation Code section 7200, et seq., and administered by the Board.

(2) JURISDICTION. "Jurisdiction" means any city, county, city and county, or redevelopment agency which has adopted a local tax.

(3) PETITION. "Petition" means a request or inquiry from a jurisdiction, other than a submission under Revenue and Taxation Code section 6066.3, for investigation of suspected misallocation of local tax submitted in writing to the Allocation Group of the Sales and Use Tax Department. The petition must contain sufficient factual data to support the probability that local tax has been erroneously allocated and distributed. Sufficient factual data should include, for each business location being questioned:

(A) Taxpayer name, including owner name and fictitious business name or dba (doing business as) designation.

(B) Taxpayer's permit number or a notation stating "No Permit Number."

(C) Complete business address of the taxpayer.

(D) Complete description of taxpayer's business activity or activities.

(E) Specific reasons and evidence why the taxpayer's allocation is questioned. If the petition alleges that a misallocation occurred because a sale location is unregistered, evidence that the questioned location is a selling location or that it is a place of business as defined by California Code of Regulations, title 18, section 1802. If the petition alleges that a misallocation occurred because the tax for a sale shipped from an out-of-state location was actually sales tax and not use tax, evidence that there was participation in the sale by an in-state office of the retailer and that title to the goods passed to the purchaser inside California.

(F) Name, title, and telephone number of the contact person.

(G) The tax reporting periods involved.

"Petition" also includes an appeal by a jurisdiction from a notification from the Local Revenue Allocation Unit of the Sales and Use Tax Department that local taxes previously allocated to it were misallocated and will be reallocated. Such a jurisdiction may object to that notification by submitting a written petition to the Allocation Group within 30 days of the date of mailing of the notification. The petition must include a copy of the notification and specify the reason the jurisdiction disputes it. If a jurisdiction does not submit such a petition within 30 days of the date of mailing of the notification, the notification of the Local Revenue Allocation Unit is final as to the jurisdiction so notified.

(4) PETITIONER. "Petitioner" is a jurisdiction that has filed a valid petition pursuant to subdivision (a)(3).

(5) DATE OF KNOWLEDGE. Unless an earlier date is operationally documented by the Board, "date of knowledge" is the date on which the Allocation Group receives a valid petition. Where a misallocation that is reasonably covered by the petition is confirmed based on additional facts or evidence supplied by the petitioner or otherwise learned as a direct result of investigating the petition, the date of knowledge is the date on which the Allocation Group received the petition.

(6) SUBSTANTIALLY AFFECTED JURISDICTION. "Substantially affected jurisdiction" is a jurisdiction for which the decision on a petition would result in a decrease to its total allocation of 5 percent or more of its average quarterly

allocation (generally determined with reference to the prior four calendar quarters) or of $50,000 or more, and includes a jurisdiction whose allocation will be decreased solely as the result of a reallocation from the statewide and applicable countywide pools.

(7) NOTIFIED JURISDICTION. "Notified jurisdiction" is a jurisdiction that has been notified as a substantially affected jurisdiction.

(b) REVIEW BY ALLOCATION GROUP.

(1) The Allocation Group will promptly acknowledge a submission intended as a petition.

(2) The Allocation Group will review the petition and issue to the petitioner a written decision to grant or deny the petition, including the basis for that decision. The written decision will also note the date of knowledge, and if other than the date the petition was received, will include the basis for that date. A reallocation will be made if the preponderance of evidence, whether provided by petitioner or obtained by Board staff as part of its investigation of the petition, shows that there was a misallocation. If the preponderance of evidence does not show that a misallocation occurred, the petition will be denied. The Allocation Group shall maintain a case log documenting the status of each petition. The case log shall be forwarded to the Board on a monthly basis. Copies of these reports shall be made available to each petitioner.

(3) If the Allocation Group does not issue a decision within six months of the date it receives a valid petition, the petitioner may request that the Allocation Group provide a status report of the petition and/or issue its decision without regard to the status of its investigation. Within ~~90~~ 60 days of receiving such a request, the Allocation Group will issue its decision based on the information in its possession.

(4) If the decision of the Allocation Group is that the asserted misallocation did not occur and that the petition should be denied, in whole or in part, the petitioner may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(5) If the decision of the Allocation Group is that a misallocation did occur, it will also mail a copy of its decision to any substantially affected jurisdiction. Any such notified jurisdiction may submit to the Allocation Group a written objection to the decision under subdivision (b)(6).

(6) The petitioner or any notified jurisdiction may appeal the decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(7) If the petitioner or a notified jurisdiction submits a timely written objection to the decision of the Allocation Group, the Allocation Group will consider the objection and, and within 90 days, issue a written supplemental decision to grant or deny the objection, including the basis for that decision. A copy of the supplemental decision will be mailed to the petitioner, to any notified jurisdiction, and to any other jurisdiction that is substantially affected by the supplemental decision. If the written objection was filed by a notified jurisdiction all future local tax allocations from the account that is subject to the inquiry will be placed in trust until the administrative process has been exhausted and a "final" decision has been rendered.

(8) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If no such timely objection is submitted, the supplemental decision of the Allocation Group is final as to the petitioner and all notified jurisdictions.

(9) The petitioner or any notified jurisdiction may request a 30-day extension to submit a written objection under subdivision (b)(6) or under subdivision (b)(8), as applicable. Such request must provide a reasonable explanation for the requesting jurisdiction's inability to submit its objection within 30 days, must be copied to all other jurisdictions to whom the Allocation Group mailed a copy of its decision or supplemental decision (to the extent known by the requesting jurisdiction), and must be *received* by the Allocation Group within 30 days of the date of mailing of its decision or supplemental decision. Within five days of receipt of the request, the Allocation Group will mail notification to the petitioner and to all notified jurisdictions whether the request is granted or denied. If a timely request for an extension is submitted, the time for the petitioner and any notified jurisdiction to file a written objection to the decision or supplemental decision of the Allocation Group is extended to 10 days after the mailing of the notice of whether the request is granted or denied. If the request is granted, the time for the petitioner and all notified jurisdictions to submit a written objection to the decision or supplemental decision of the Allocation Group is further extended to the 60th day after the date of mailing of the decision or supplemental decision. Regulation 1807. (Contd.) 3

(c) REVIEW BY APPEALS DIVISION.

(1) The petitioner or any notified jurisdiction may appeal the supplemental decision of the Allocation Group by submitting a written objection to the Allocation Group within 30 days of the date of mailing of the Allocation Group's supplemental decision, or within a period of extension authorized by subdivision (b)(9). Such an objection must state the basis for the objecting jurisdiction's disagreement with the supplemental decision and include all additional information in its possession that supports its position.

(2) If a timely objection to its supplemental decision is submitted, the Allocation Group will prepare the file and forward it to the Appeals Division within 30 days of receipt of the objection. The petitioner, all notified jurisdictions, and the Sales and Use Tax Department will thereafter be mailed notice of the appeals conference, which will generally be sent at least 45 days prior to the scheduled date of the conference. The Appeals Division shall schedule an appeals conference within 6 months from receipt of the file from the Allocation Group.

(A) Petitioner or any notified jurisdiction may continue to discuss the dispute with staff of the Sales and Use Tax Department after the dispute is referred to the Appeals Division. If, as a result of such discussions or otherwise, the Sales and Use Tax Department decides the supplemental decision of the Allocation Group was incorrect or that further investigation should be pursued, it shall so notify the Appeals Division, the petitioner, and all notified jurisdictions.

(B) If the Department sends notice to the Appeals Division in accordance with the subdivision (c)(2)(A) no later than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will suspend its review and the dispute will be returned to the Department. The Department will thereafter issue a second supplemental decision within 60 days, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(C) If the Department sends notice to the Appeals Division in accordance with subdivision (c)(2)(A) less than 30 days prior to the date scheduled for the appeals conference, the Appeals Division will decide whether the dispute should be returned to the Department or remain with the Appeals Division, and notify the parties accordingly. If the dispute is returned to the Department, the Department will thereafter issue a second supplemental decision within 60 days, or will return the dispute to the Appeals Division along with a report of its further investigation, if appropriate, for the review and decision of the Appeals Division.

(D) Where the Department issues a second supplemental decision in accordance with subdivision (c)(2)(B) or (c)(2)(C), it will send a copy of the decision to the petitioner, any notified jurisdiction, and any other jurisdiction that is substantially affected by the second supplemental decision, any of whom may appeal the second supplemental decision by submitting a written objection under subdivision (c)(1) within 30 days of the date of mailing of that supplemental decision, or within a period of extension authorized by subdivision (b)(9). If an objection to a second supplemental decision is filed by either the petitioner or a notified jurisdiction it will be immediately forwarded to the Appeals Division. An appeals conference shall be scheduled within 90 days of receipt of the objection. If no such timely objection is submitted, the second supplemental decision is final as to the petitioner and all notified jurisdictions.

(3) The appeals conference is not an adversarial proceeding, but rather is an informal discussion where the petitioner, any notified jurisdictions who wish to participate, and the Sales and Use Tax Department have the opportunity to explain their respective positions regarding the relevant facts and law to the Appeals Division conference holder. A notified jurisdiction may participate in the appeals conference regardless of whether the Sales and Use Tax Department has previously ruled in favor of, or in opposition to its position. Any subject taxpayer directly taking part in an appeals conference shall disclose to all participants the existence and terms of any revenue sharing or incentive agreement involving local tax monies. To make the conference most productive, each participant ~~should~~ shall submit all facts, law, argument, and other information in support of its position to the Appeals Division conference holder, and to the other participants, at least 15 days before the date of the appeals conference. ~~however~~ Additional relevant facts and arguments will be accepted at any time at or before the appeals conference. If, during the appeals conference, a participant requests permission to submit additional written arguments and documentary evidence, the conference holder may grant that participant ~~15 days~~ 30 days after the appeals conference, ~~or 30 days with sufficient justification, to submit to the conference holder,~~ with copies to all other participants, such additional arguments and evidence. Any other participant at the conference who is in opposition to the requesting participant on the issue(s) covered by the additional submission is allowed 15 days to submit to the conference holder, with copies to all other participants, arguments and evidence in response. No request by a participant for further time to submit additional arguments or evidence will be granted. ~~without the approval of the Assistant Chief Counsel of the Appeals Division or his or her designee. The Appeals Division on its own initiative may also request, at or after the appeals conference, further submissions from any participant.~~

(4) The Appeals Division shall notify all participants once the final submission ~~Within 90 days after the final submission~~ authorized by subdivision (c)(3), has been received. Within 90 days of receipt of the final submission; the Appeals Division will issue a written Decision and Recommendation (D&R) setting forth the applicable facts and law and the conclusions of the Appeals Division. The Chief Counsel may allow up to ~~90~~ 30 additional days to prepare the D&R upon request of the Appeals Division. Both the request and the Chief Counsel's response granting or denying the request for additional time must be in writing and copies provided to the petitioner, all notified jurisdictions, and the Sales and Use Tax Department. A copy of the D&R will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the D&R, and to the Sales and Use Tax Department.

(5) The petitioner or any notified jurisdiction may appeal the D&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R.

~~(6) The petitioner, any notified jurisdiction, or the Sales and Use Tax Department may also appeal the D&R, or any Supplemental D&R (SD&R), by submitting a written request for reconsideration (RFR) to the Appeals Division before expiration of the time during which a timely request for Board hearing may be submitted, or if a Board hearing has been requested, prior to that hearing. If a jurisdiction or the Sales and Use Tax Department submits an RFR before the time for requesting a Board hearing has expired, the Appeals Division will issue an SD&R to consider the request, after obtaining whatever additional information or arguments from the parties that it deems appropriate. If an RFR is submitted after a jurisdiction has requested a Board hearing, the Appeals Division will determine whether it should issue an SD&R in response. A copy of the SD&R issued under this subdivision or under subdivision (c)(7) will be mailed to the petitioner, to all notified jurisdictions, to any other jurisdiction that will be substantially affected by the SD&R, and to the Sales and Use Tax Department. The petitioner or any notified jurisdiction may appeal the SD&R by submitting a written request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the SD&R.~~

~~(7) Whether or not an RFR is submitted, at any time prior to the time the recommendation in the D&R or prior SD&R is acted on by the Department as a final matter or the Board has held an oral hearing on the petition, the Appeals Division may issue an SD&R as it deems necessary to augment, clarify, or correct the information, analysis, or conclusions contained in the D&R or any prior SD&R.~~

~~(8) If no RFR is submitted under subdivision (c)(6) or request for Board hearing under subdivision (d)(1) within 60 days of the date of mailing of the D&R or any SD&R, the D&R or SD&R as applicable is final as to the petitioner and all notified jurisdictions unless the Appeals Division issues an SD&R under subdivision (c)(7).~~

(d) REVIEW BY BOARD.

(1) The petitioner or any notified jurisdiction may submit a written request for Board hearing if it does so to the Board Proceedings Division within 60 days of the date of mailing of the D&R ~~or any SD&R~~. Such a request must state the basis for the jurisdiction's disagreement with the D&R ~~or SD&R~~ as applicable and include all additional information in its possession that supports its position.

(2) If the Board Proceedings Division receives a timely request for hearing under subdivision (d)(1), it will notify the Sales and Use Tax Department, the petitioner, any notified jurisdiction, any other jurisdiction that would be substantially affected if the petition were granted, and the taxpayer(s) whose allocations are the subject of the petition, that the petition for reallocation of local tax is being scheduled for a Board hearing to determine the proper allocation.

(3) The Sales and Use Tax Department, the petitioner, and all jurisdictions notified of the Board hearing pursuant to subdivision (d)(2) are parties and may participate in the Board hearing. The taxpayer is not a party to the Board hearing unless it chooses to actively participate in the hearing process by either filing a brief or making a presentation at the hearing. Any taxpayer or notified jurisdiction electing to participate in the hearing shall disclose the existence and terms of any revenue sharing agreements between the taxpayer and any notified jurisdiction.

(4) Briefs may be submitted for the Board hearing in accordance with California Code of Regulations, title 18, sections 5270 and 5271.

(5) To the extent not inconsistent with this regulation, the hearing will be conducted in accordance with Chapter 5 of the Board of Equalization Rules for Tax Appeals (Cal. Code Regs., tit. 18, § 5510, et seq.). The Board will apply the preponderance of evidence rules set forth in subdivision (b)(2) in reaching its decision and not the burden of proof rules set forth in California Code of Regulations, title 18, section 5541. The Board's final decision on a petition for reallocation exhausts all administrative remedies on the matter for all jurisdictions.

(e) LIMITATION PERIOD FOR REDISTRIBUTIONS. Redistributions shall not include amounts originally distributed earlier than two quarterly periods prior to the quarter of the date of knowledge. Regulation 1807. (Contd.) 5

(f) APPLICATION TO SECTION 6066.3 INQUIRIES.

The procedures set forth herein for submitting a petition for reallocation of local tax are separate from those applicable to a submission under Revenue and Taxation Code section 6066.3. If a petition under the procedures set forth herein and a submission under section 6066.3 are both filed for the same alleged improper distribution, only the earliest submission will be processed, with the date of knowledge established under the procedures applicable to that earliest submission. However, the procedures set forth in subdivisions (b), (c), and (d) also apply to appeals from reallocation determinations made under section 6066.3.

(g) OPERATIVE DATE AND TRANSITION RULES.

This regulation is intended to reduce the time required to decide the validity of reallocation petitions and otherwise improve the process for doing so. It is intended to have a neutral impact only on the current dispute over the continuing validity of certain petitions that are governed by prior Regulation 1807 (effective February 22, 2003).

(1) The operative date of this regulation is the date it becomes effective under Section 11343.4 of the Government Code (thirty days after it has been approved by the Office of Administrative Law and forwarded to the Secretary of State) and it shall have no retroactive effect.

(2) Petitions filed prior to the operative date of this regulation, shall be reviewed, appealed and decided in accordance with this regulation as to procedures occurring after that date. All such petitions filed prior to January 1, 2003 and denied by Board Management must perfect any access they may have to a Board Member hearing no later than 60 days after the operative date of this regulation.

History: Adopted August 1, 2002, effective February 22, 2003.
Amended May 28, 2008, effective September 10, 2008. Replaced all previous language to provide for a more comprehensive process for review of petitions for local tax reallocation, to restructure the request for extension process, and to provide earlier notification to substantially affected jurisdictions.

Regulations are issued by the State Board of Equalization to implement, interpret or make specific provisions of the California Sales and Use Tax Law and to aid in the administration and enforcement of that law. If you are in doubt about how the Sales and Use Tax Law applies to your specific activity or transaction, you should write the nearest State Board of Equalization office. Requests for advice regarding a specific activity or transaction should be in writing and should fully describe the facts and circumstances of the activity or transaction.

THE HdL COMPANIES

Revenue Management for Local Government

Hinderliter, de Llamas & Associates
HdL Coren & Cone
HdL Software, LLC

January 19, 2011

Suzanne Buehler, Acting Chief
Tax Policy Division – MIC:92
Board of Equalization
P.O. Box 942879
Sacramento, CA 94279-0092

Dear Ms. Buehler:

Thank you for the opportunity to participate in the January 6, 2011 Interested Parties meeting regarding proposed changes to Regulations 1807 and 1828. It has been a little over 2 years since these Regulations were last amended; we agree that those prior changes have helped to reduce the case backlog. However, we believe that additional changes are required to further streamline the process. We respectfully disagree with Staff's assertion that the prior changes "just need more time" to produce the desired outcomes. We feel that the gaps and inconsistencies in the current versions of these Regulations should be addressed regardless of progress made on the backlog.

In response to the revisions discussed at the January 6, 2011 meeting:

1. Establish an overall time limit to bring a case to Board hearing – three years from the date of knowledge, with a possible extension of six months. (Suggested by MuniServices)

   Response Clarifying and tightening time limitations at several individual stages in the process, including the elimination of any open-ended or unlimited periods for the Board to take action, would be a more effective solution than establishing an overall time limitation.

2. Subdivision (b)(2). Require AG to maintain a case log documenting the status of each petition and forward that case log to the Board monthly. Copies of these reports will be made available to each petitioner.

   Response: We are asking that each AG auditor maintain a log of what *specific* actions have been taken to resolve an inquiry (i.e., a phone call, an email, or letter). This will provide for better case tracking and will allow both Board Management and the petitioner to better assess whether any delays are truly due to an uncooperative taxpayer or simply a lack of diligent follow-up. A status report could be provided on an "as requested" basis as opposed to some regularly scheduled interval.

3. Subdivision (b)(3). After six months from the date AG receives the petition, allow the petitioner to request a status report.

   Response: We concede that the petitioner is already "allowed" to make such a request. We further acknowledge that the AG is generally very responsive. However, there have been instances where requests have either been ignored completely, or have elicited a generic "we are working on it" response. Requiring a response and specifying that said response should detail the specific steps taken to resolve in inquiry will help resolve these issues.

4. Subdivision (b)(3). After six months from the date AG receives the petition, if the petitioner requests that AG issue a decision, reduce the time for AG to provide a decision from 90 days to 60 days.

   Response: As a compromise we could make it 60 days, but allow the AG to request a 30-day extension if/when it can be shown via the case log that the matter is being diligently and aggressively pursued, and that the additional 30 days is likely to make a difference in the Board being able to obtain the necessary information from the taxpayer.

5. Subdivision (b)(4). Notify potentially affected jurisdictions of denied petitions at the AG level.

   Response: The general consensus at the Interested Parties meeting is that this is too early and notification at this stage is contrary to the goal of streamlining the process. We concur. The appropriate time to include any potentially affected jurisdictions would be prior to an Appeals Conference.

6. Subdivision (b)(7). Establish a 90 day time limit for AG to issue a supplemental decision.

   Response: There is currently *no* deadline for the AG to complete its further investigation and issue a supplemental decision. When denied, a petitioner has 30 days to do further research and file an appeal, with one 30 day extension. If the petitioner has a maximum of 60 days, a 60 to 90 day limit on Board staff seems reasonable as well. We *all* face the same difficulties in getting information from the taxpayer.

7. Subdivision (b)(7). Add the provision that if a written objection was filed by a notified jurisdiction, future distributions of local tax reported by the taxpayer identified in the petition will be placed in trust until the administrative process has been exhausted and a final decision rendered.

   Response: HdL agrees with Staff that clear guidelines should be established as to when future distributions would be suspended. This option would only be exercised after a supplemental decision has been issued by the AG and Board staff has concluded after at least two separate investigations that the local tax does not belong to the jurisdiction currently receiving it. We suggest establishing criteria (perhaps the same used in the notification thresholds: 5% or $50,000 per reporting period).

   It was suggested that suspending the allocation would place too great a financial burden on the jurisdiction currently receiving the funds *and* that suspending the funds is unnecessary because an agency following proper accounting practices would have already placed the funds in reserve as a potential liability. These are clearly

contradictory statements. If a city can afford to place funds in reserve it can afford to have the Board do it on its behalf.

It was further suggested that if a Board decision would result in a very large re-distribution the Board members could simply exercise their discretion under Section 7209 and not make the reallocation. We respectfully submit that this is patently unfair to the jurisdiction rightfully entitled to the revenue. Not taking action to ensure the funds in question are available for reallocation actually takes away the Board member's discretion, and can only result in an unjust outcome.

8. Subdivision (c)(2). Establish a 30 day time limit for AG to transfer files to Appeals.

   Response: We acknowledge that this is the current practice. That having been said, we see no problem in making this a requirement under the Regulation. Regardless of the current practice, there is currently *no* deadline for AG to forward a case to Appeals.

9. Subdivision (c)(2). Establish a six-month time limit for Appeals to schedule an Appeals Conference once the file has been received from AG.

   Response: Six months is ample time to schedule a conference. Appeals is not launching an investigation from scratch, it is (or should be) evaluating an investigation and interpretation of relevant local tax regulations already made by the AG. Evaluation of the merits of either side's arguments will be made after the Appeals Conference is held. If six months is still not considered feasible, Board Management should consider assigning more than one attorney to this workload, even if on a temporary basis until the backlog is resolved.

10. Subdivision (c)(2). Add an ordering rule to provide that appeals conferences will normally be scheduled in the order of time of receipt by Appeals (suggested by MuniServices).

    Response: We acknowledge that this is the normal practice and agree with staff that Appeals should have some flexibility to take dollar amounts and availability of conference participants into consideration.

11. Subdivision (c)(2)(B) & (C). In the situation where AG has continued to work with the petitioner or notified jurisdiction after the file has been sent to Appeals, establish a 60-day time limit for AG to issue a second supplemental decision.

    Response: While we agree that there shouldn't be any *unnecessary* impediments or time limitations placed upon the Board's ability to complete an investigation, there also should not be anywhere in Regulation 1807 an open-ended or unlimited time period for Staff to advance a case (or not).

    If AG sends notice to the Appeals Division that it has obtained additional information that would warrant a second supplement decision, then it stands to reason that AG has received that information *from the taxpayer*. If 60 days is not considered sufficient we would accept a provision for a 30-60 day extension.

12. Subdivision (c)(2)(D). Add the provision that if either the petitioner or a notified jurisdiction files an objection to the AG's second supplemental decision the case will be immediately forwarded to Appeals, and an Appeals conference will be scheduled within 90 days of the objection.

    Response: As we understand it, Staff's position is that this time limitation is not feasible given the current backlog and will not be necessary once the backlog is cleared. This seems to assume no new cases entering the pipeline. We respectfully submit that the time limitation is necessary *in order to* clear the backlog and to prevent one from occurring in the future. We acknowledge that is may require assigning more than one attorney in Appeals to local tax cases, at least on a temporary basis. Backlog or not there should be more than one attorney trained and available to hear these cases.

    Further discussion is required so that we all understand how many cases are currently awaiting an Appeals Conference and what the anticipated time frame is to complete the conferences. To be consistent with Item 9 Subdivision (c)(2), we suggested a 6 month window.

13. Subdivision (c)(3). Clarify that a notified jurisdiction may participate in the appeals conference regardless of whether AG ruled in favor or against the petitioner.

    Response: We note that the current version of Regulation 1807 (c)(3) explicitly allows participation by any notified jurisdiction. However, current practice is that a jurisdiction is not notified at this level if the Board supports its position. We submit that the jurisdiction should receive notice, be provided upon request a copy of the case file, and then be allowed to participate in the Appeals Conference as a "notified jurisdiction".

14. Subdivision (c)(3). Require any subject taxpayer taking part in an appeals conference to disclose the existence and terms of any revenue sharing agreement involving local tax distributions.

    Response: BOE investigations of local tax petitions are 100% dependent upon information provided by the taxpayer. The taxpayer is in complete control of the information flow - what information is released, even who within the organization is authorized to talk with the Board. Absent a sharing agreement this is generally acceptable as the taxpayer has no real motivation to shade or characterize operations in a certain way. Where it exists, a sharing agreement is an important component of the overall picture and knowledge of said agreement helps insure that the Board performs an appropriately thorough investigation.

    It was suggested that any consultant representing a jurisdiction in a local tax case also reveal the terms of their contingent fee agreement. We are not principally opposed. However, we again point out that any information a consultant provides with respect to a subject taxpayer's business activities is subject to confirmation/verification by the taxpayer. ***Nothing*** a consultant submits is taken at face value; the same cannot be said for information submitted by a taxpayer. We are not suggesting that the existence of a sharing agreement automatically means that a taxpayer would misrepresent their business activities. However, this procedure should not be structured on the assumption that this would never happen.

It was also suggested that this provision is unnecessary as a copy of any sharing agreement could easily be obtained through a Public Records Request. However, our experience is that cities are not always forthcoming with this information. In any case, if this is public information and readily available, there is no harm is asking the taxpayer to provide it to assist the Board in its investigation.

It is also important to note that many of the local tax sharing/rebate agreements are executed through third parties. The jurisdiction pays the third party, who, after taking a portion, rebates a portion of the local tax back to the taxpayer. In these cases the documents detailing the terms of the agreement would not be available through a Public Records Request.

15. Subdivision (c)(3). Revise "should" to "shall" to require participants to provide supporting documentation 15 days before an appeals conference.

    Response: Any Board proceeding (i.e., an Appeals Conference, a Board Hearing, or an Interested Parties meeting) will be most productive if/when all participants are adequately prepared to address the information and positions forwarded by another side. In order to prevent unnecessary and lengthy post-conference submissions each participant should make a genuine effort to fully outline their case/position within the deadlines specified.

    Participants should not be allowed to "hold back" evidence or information in an effort to impede the process or prevent the other participants from properly preparing for the Appeals Conference. The Board should at least consider whether last minute or "11th hour" submittals truly include information that was not available prior to the established deadlines. The Board should also consider sanctions if/where is can be demonstrated that any regular participant in Board proceedings demonstrates a pattern of "11th hour" submittals.

16. Subdivision (c)(3). Reword the provision that the appeals conference holder may allow participants up to 30 days to provide additional information. Currently the subdivision provides that the conference holder may grant conference participants 15 days to provide additional information, or 30 days with sufficient justification.

    Response: The Appeals Conference should be viewed as the end-point of a lengthy investigative and submittal/response process, not the beginning. Participants in the Conference have at least a 45 day notice and should be prepared with their best arguments ***before*** the conference, not after. Post conference submittals should be limited to one per participant, with a 30-day deadline on each side. This will ensure that no more than 60 days elapses between the conference and when the Board starts preparing a Decision and Recommendation.

17. Subdivision (c)(3). Delete the provision that allows participants further extensions of time to provide information on the approval of the Assistant Chief Counsel of the Appeals Division.

    Response: After hearing discussion, we are in agreement with Staff's position.

18. Subdivision (c)(4): Eliminate the provision that Appeals can request further submissions from any participant at or following the appeals conference.

Response: In the alternative we are comfortable with limiting post conference submittals to one per side, with a firm 30-day deadline for each submittal.

19. Subdivision (c)(4): Require Appeals to notify participants once the final submission is received.

    Response: We acknowledge that this is the current practice; however we see no harm in formalizing it within the Regulation so that all parties are aware of the date and the subsequent deadline for a Decision & Recommendation to be issued.

20. Subdivision (C)(4). Shorten the request for an extension of time to prepare the Decision & Recommendation (D&R) from 90 days to 30 days.

    Response: To clarify, Appeals already has 90 days (3 months) to prepare a D & R after the final post-conference submittal, which could be up to 60 days after the conference. In other words, Appeals has 5 months following a conference to issue a D & R. In all but very unusual circumstances another 3 months (8 months total) should not be necessary. Six months is more than adequate time. If this is still viewed as unfeasible given current resources then resources need to be expanded.

    This timing does not take into consideration the period of up to several ***years*** a case spends with the Allocation Group.

21. Subdivision (C)(6), (7). Eliminate the request for reconsideration (RFR) and Supplemental D & R (SD&R) process.

    Response: We accept that eliminating these provisions would be inconsistent with RTA Regulation S266. In the alternative we suggest tighter standards for a RFR or SD&R request, including the requirement that said request contain truly "new" that was not available earlier in the process, and not just a "spin" on the information/arguments previously presented.

22. Subdivision (C)(8). Eliminate the provision that the D&R's and SD&R's are final after 60 days if not appealed to the Board.

    Response: We agree with staff, D & R's and SD&R's should be considered final after 60 days.

23. Subdivision (d). Require that either the hearing notice or a status report be issued within 90 days of the request for a hearing.

    Response: We respect that the Board Members have the discretion to set their own calendar. However at minimum it would be helpful for all parties to know an approximate time period when a case might be heard.

24. Subdivision (d)(3). Require the taxpayer and any participating jurisdiction taking part in a Board hearing to disclose the existence and terms of any revenue sharing agreement between the taxpayer and any participating jurisdiction.

    Response: We believe that this is important for all the same reasons outlined under Item 14. The wording for this suggestion should be revised to read. "...any revenue sharing agreement between the taxpayer and any other party (to incorporate third party agreements) and provides that a portion of the local sales tax is returned to the taxpayer."

We would also like to respond to the final paragraph of Mr. Vinatieri's letter dated, January 5, 2011 that reads:

> *Based upon our knowledge of local tax appeals, we offer a last concern. It has been our experience that a consultant retained by a particular city ("A") to provide various consulting services including revenue enhancement is also retained by another city ("B") to provide revenue enchancement services. In that context, the consultant, while still a* [sic] *consultant for City A, filed a petition for reallocation against City A on behalf of City B. Beyond the obvious unfairness of the situation is a clear conflict of interest. To gain confidential information while in a fiduciary relationship only to utilize that same information against that client, is manifest. A consultant should not be rewarded with financial gain as a result of an obvious conflict of interest. This issue, along with the above items, should also be reviewed.*

The HdL Companies provides revenue management services to over 309 local government agencies. We share a common goal with Board staff: to see that local tax is allocated ***correctly*** statewide.

We are not a legal firm and, therefore, not subject to the same conflict of interest rules. However, because we operate with the highest ethical standards, we provide potential clients with a current, complete list of agencies that we represent. There are no surprises. We strive to make sure that each agency is receiving the correct amount of local tax from each taxpayer in their jurisdiction. During the contract negotiation process, our clients are provided with a list of references, often neighboring cities or counties.

We find that while our clients want to receive the maximum amount of local tax, they do not want to keep any local tax money that belongs to another jurisdiction. It is not uncommon for our clients to ask us to correct a local tax allocation if they have received another jurisdiction's funds in error. It is our practice to advise a client if we anticipate a negative reallocation as a result of a petition we have filed on behalf of another agency.

If we conclude that we unable to support or defend the business practices of a client with respect to local tax issues, we can, and have exercised our options to sever that contract.

Thank you for your consideration of the above. We look forward to further discussion of these issues at the next Interested Parties meeting.

Sincerely,

Robin Sturdivant

RLS:ppl

cc: Lynn Whitaker, Business Taxes Committee Team

MUNISERVICES
MuniServices, LLC.
1400 K Street, Suite 212 Sacramento, California 95814
Phone: 800.800.8181 Fax: 916.441.4688
www.MuniServices.com

Via email

January 20, 2011

Ms. Susanne Buehler, Acting Chief, Tax Policy Division
Sales and Use Tax Division
State Board of Equalization
450 N Street
Sacramento, CA 95814

Re: MuniServices, LLC comments and suggestions to proposed amendments to Regulation 1807, *Petitions for Reallocation of Local Tax* and Regulation 1828, *Petition for Distribution or Redistribution of Transactions and Use Tax*

Dear Ms. Buehler:

As indicated in our earlier correspondence dated September 1, 2010 we had originally felt that having deadlines where there were none could make a significant improvement. After listening to staff at the January 6, 2011 interested parties meeting we see a little more of the complexity and the dominant role that lack of resources and delays by taxpayers play in prolonging the process. We still believe that reasonable timelines could motivate parties and could produce sufficient time pressure to move cases forward more quickly but on their own such deadlines might have the unintended consequence of deciding cases based on insufficient information. We thus venture to suggest some solutions that might address both efficiency and factual completeness.

We will address the 24 suggested changes from the Initial Discussion Paper in the following three general groups rather than individually: increasing efficiency and fact-finding ability; transparency; procedural.

Increasing efficiency and fact-finding ability

Items number 1,4,6,8,9,11, 20, and 21

While all the "causal" factors causing the current delays have not yet been identified, the staff has indicated that some of the delay arises from the need to obtain sufficient facts to make a fair determination of the alleged misallocation. Staff has indicated that their objection to timelines in most cases is based on the fear that a timeline would undermine their ability to do a thorough investigation. With due deference to staff, we do not believe that unlimited time is the solution. We propose instead a process of coordinated "discovery" from the taxpayer at two levels.

First when a jursidiction or its representative submits a petition, the initial investigation by staff should include a requirement to obtain specific information and contact the taxpayer's employee or representative that is listed in the petition. Second, if the Allocation Group (AG) does deny the petition and the jurisdiction or its representative chooses to appeal, the parties would work together to coordinate requests for information from the taxpayer and set deadlines for those requests. For example, the following suggestions, if implemented, could facilitate more efficient fact-finding.

1. Recommend that language be placed in the *Allocation Group Manual* stating that local taxpayer representatives should always be contacted first to discuss local business affairs. Presumably this would be the same person the petitioners have spoken to and they will tell the AG auditor the same thing. Once this is confirmed the AG auditor can contact corporate headquarters or tax department to discuss local tax allocation and clear up any discrepancies between what the local contact said and what the taxpayer headquarters believes.

2. Recommend that typical questions the AG auditor should ask also be placed in the *Allocation Group Manual*. Hopefully, this way everyone is assured that the correct questions have been asked and the answers can be relied upon.

3. Recommend that language be added to the Board's *Audit Manual* (*AM*) or investigations made by district office auditors. These investigations must be given a certain priority by the audit staff, similar to the priority given to a claim for refund that is referred to a district office for investigation, and not considered a side item to be considered as a minor part of an audit. The *AM* should contain language instructing auditors on what steps should be taken to verify correct local tax allocation.

4. An important part of having the petitions investigated on a timely basis is for the field auditor to take ownership of the investigation. Board Auditors currently must account for time spent on audits and claims for refunds and must explain in detail any delays in the completion of these items. Similar requirements for investigations of local tax allocations should be included in the *Audit Policy and Management Guidelines Manual (APMG)*.
5. Field Audit Supervisors (Supervisors) and District Principal Auditors (DPA's) should be required to make sure these investigations are done on a timely basis. In the past to facilitate this, copies of follow-up memos written by the AG staff to the district offices were forwarded to an increasingly higher and higher level of Sales and Use Tax Department management in the hopes that supervisors and DPA's would monitor the progress of the investigations and see to it that they are completed on a timely basis. This practice was abandoned several years ago, but should be reinstated and formalized in writing in the *APMG*. Districts are also required to send reports on the status of investigations of claims for refunds. A similar requirement should be made for districts to report the status of local tax investigations.

Coordinated fact-finding could benefit taxpayers as there would be less repetitive questioning and more coordinated requests for information and reduce the delay caused by fact finding. It would also help satisfy the demand from the appeals division that there be written evidence for nearly every factual proposition.

Transparency

Items 2, 3, 10, 12, and 23

These items generally propose methods whereby local jurisdictions or their representatives understand where their cases are in the queue. We are asking for processes that are reasonable in the course of tracking an issue and without burden to Board staff. We (as a consultant to a local jurisdiction) want to know roughly when cases will be calendared at each level so we can communicate to the respective local jurisdictions who expect to be apprised of progress both from the Board and their respective consultants on a regular basis, and throughout the appeals process.

Procedural

Items 5 and 13

Under items 5 and 13, we do not object to parties who have interests participating in the process. But until we are given more detail about how staff would propose to define and

calculate the "potentially affected" threshold, we cannot comment with specificity. We would suggest that such notification is given as part of the appeals conference so that those who are truly affected can participate.

Items 14 and 24

With respect to sharing agreements we are agnostic on this matter we simply do not believe that the presence or absence of sharing agreements is that difficult to find and we are not convinced that regulatory changes are needed to address what appears to be a limited issue. Our biggest concern is that local tax allocation actually follows the point-of-sale activity.

Items 5 through 18

We understand there is an appeal for providing deadlines when submitting new evidence, but we also understand the concern of the department that they be able to make a decision with as much information as possible. Our modest suggestion is that if a party wants to present evidence after the deadline it must justify to the satisfaction of the appeals division why it was unable to procure the evidence prior to the stated deadline. This proposal would allow for a flexible rule and instead requires accountability for the parties to provide the evidence.

We look forward to your second discussion paper and request that you take the above into consideration. Thank you for giving us the opportunity to comment and we look forward to continuing to work with the Board to find ways to continually improve the efficiency of this process.

Sincerely yours,

Fran Mancia
MuniServices, LLC

cc: Leila Hellmuth (via email)
Lynn Whitaker (via email)

BEWLEY LASSLEBEN & MILLER LLP
Established 1888

13215 E. PENN STREET, SUITE 510, WHITTIER, CA 90602-1797 562.698.9771

JOSEPH A. VINATIERI, ESQ.

CALIFORNIA STATE AND LOCAL TAX GROUP

JOSEPH A. VINATIERI JEFFREY S. BAIRD
JASON C. DEMILLE KEVIN P. DUTHOY
RICHARD L. DEWBERRY

January 5, 2011

Susanne Buehler
Acting Chief, Tax Policy Division
Sales and Use Tax Department
State Board of Equalization
450 N Street
Sacramento, California 95814

Re: Regulation 1807 Interested Parties Meeting January 6, 2011
Response to Interested Parties Letter dated December 17, 2010

Dear Ms. Buehler:

This letter is written to respond to various issues raised in the Initial Discussion Paper prepared for the meeting to be held on January 6, 2011. We have reviewed the letter from Mr. Klehs as well as that of MuniServices and have various thoughts related thereto.

By way of background, our law firm has been involved with several petitions and we are concerned with the SBE Regulation 1807 petition process. All levels of that process must be fair, impartial, and objective, and as such, it is vital that the Appeals Division ("Appeals") be given ample information and time to sift through the factual record to make an informed and reasoned legal decision. With the foregoing in mind, we respond to the proposed revisions:

1. Establish an overall time limit

   Response: We are in agreement with the staff comments.

2. Subdivision (b)(2).

   Response: We are in agreement with the staff comments.

3. Subdivision (b)(3).

   Response: We are in agreement with staff comments.

4. Subdivision (b)(3)

We are in agreement with staff comments.

5. Subdivision (b)(4).

Response: We are in agreement with staff comments.

6. Subdivision (b)(7).

Response: We are in agreement with staff comments.

7. Subdivision (b)(7).

Response: The statement is made, "the Board has held distributions of local tax in suspense in cases where staff's investigation shows that a reallocation may occur and it is in the best interest of the State to hold the funds. This action has rarely been taken and when done, was based on the particular circumstances of that case."

We have experienced the staff's withholding of distributions. Staff's failure to make distributions is illegal and without any legal basis or authority in the Code. Staff's actions are arbitrary especially when staff makes a determination that "a reallocation may occur". There is an appeal process in Regulation 1807 which must be followed by all parties to the reallocation process, including the staff. By arbitrarily withholding monies due to a local municipality, AG acts as both "judge and jury", effectively bypassing the appeal process when the AG thinks it "is in the best interest of the State to hold the funds". If funds are to be withheld, there should be legislative authorization to do so, not arbitrary staff action based upon some "investigation" allegedly "in the best interest of the State" and on non-defined "particular circumstances."

Another exacerbation of staff's action to withhold monies without any legal authorization is the failure to accrue interest on those monies which have been illegally withheld. If the Business Taxes Committee determines that it will seek legislative authority to withhold distribution of monies, then there must be a provision for interest to be paid on those monies when final allocation actually takes place. This is a sensitive issue of state government versus local government relationship. By law those local tax monies must be allocated to the local level. To the extent that the state withholds those local monies without the payment of interest, the state is unjustly enriched at the expense of local government. At a time when state government mandates more and more local government action without providing funding for that action, failure to provide interest on monies due upon final allocation borders on the unconscionable

8. Subdivision (c)(2)

Response: We are in agreement with staff's comments.

9. Subdivision (c)(2)

Response: It is critical that Appeals have an opportunity to independently review the facts and law related to the petition for reallocation. This is especially true where the AG "investigation" is not full and complete. Simple fundamental fairness dictates that the reviewer of the AG action must have full, complete and independent opportunity to review the actions of the AG. It is important that Appeals perform this task with due haste but it must also insure that the appeal function is done objectively and independent of the AG. To "saddle" Appeals with an arbitrary time limit would limit Appeals' fundamental reason for existence...to review the actions of the AG.

10. Subdivision (c)(2).

Response: We are in agreement with staff's comments

11. Subdivision (c)(2)(B)&(C).

Response: We are in agreement with staff's comments.

12. Subdivision (c)(2)(D).

Response: We are in agreement with staff. However we are aware of the desire of some to withhold review of Regulation 1807 and whether the desired goals of 1807 are being met. We have grave concerns regarding the feasibility of the "supplemental" and "second supplemental" process. In our experience, the "second supplemental" (and to some extent the "supplemental") constitute a wasteful regulatory process that is not meaningful and actually slows the appeal process because matters that need to get to Appeals are bogged down.

13. Subdivision (c)(3).

Response: We are in agreement with staff's comments.

14. Subdivision (c)(3).

Response: The disclosure of the terms and conditions of a revenue sharing agreement is irrelevant to the determination of whether a petition for reallocation is with or without basis. The role of the State Board of Equalization is to determine, based upon the facts and the law, whether a petition for reallocation is correct or incorrect. The State Board of Equalization has acknowledged same in its briefing in the San Mateo litigation.

It could be argued by some that the existence and terms of the revenue sharing agreement might impact the credibility of testimony given by a taxpayer and/or municipality. However, if the Board wants to pull itself into this "can of worms" then as a matter of "equal dignities" the consulting agreement between a city and its outside consultants to perform reallocation services on behalf of the city must also be disclosed for similar credibility concerns. This is especially true where the outside consultants receive a percentage of the amount that might be reallocated in a decision made by the AG or Appeals.

15. Subdivision (c)(3).

Response: We are in agreement with staff's comments.

16. Subdivision (c)(3).

Response: We are in agreement with staff's comments.

17. Subdivision (c)(3).

Response: We are in agreement with staff. It is critical that ample time be given for Appeals to analyze and procure all information to make a reasoned decision based on the law.

18. Subdivision (c)(3)

Response: We are in agreement with staff. Our experience is that unfortunately, not all information is procured from all parties at the lower level. It is Appeals' singular function to make sure that all the facts are determined and a well reasoned decision made, based upon all the facts, is provided. To eliminate the ability to provide further information that might come out at an Appeals conference is to deny fundamental fairness and the inherent nature of the appellate process itself.

19 Subdivision (c)(4).

Response: We are in agreement with staff's comments.

20. Subdivision (c)(4).

Response. We agree with staff. One of the inherent problems with the 1807 process is its lack of symmetry with the Appeals process as found in the Rules for Tax Appeals of the State Board of Equalization and Article 6 commencing at Regulation 5260, Appeals Conferences. If anything, Regulation 1807 should be amended into the Rules for Tax Appeals, not provide a further carve out for local tax appeals dissimilar from all other tax programs administered by the Board under the Rules for Tax Appeals.

21. Subdivision (c)(6),(7).

Response: We are in agreement with the staff. See comments regarding Item 20 above.

22. Subdivision (c)(8).

Response: We are in agreement with staff. See our response to Item 20 above.

23. Subdivision (d).

Response: We are in agreement with staff. See our response to Item 20 above.

24. Subdivision (d)(3).

Response: We are in agreement with staff. See our response with respect to Item 14 above.

Based upon our knowledge of local tax appeals, we offer a last concern. It has been our experience that a consultant retained by a particular city ("A") to provide various consulting services including revenue enhancement is also retained by another city ("B") to provide revenue enhancement services. In that context, the consultant, while still consultant for City A, filed a petition for reallocation against City A on behalf of City B. Beyond the obvious unfairness of the situation is a clear conflict of interest. To gain confidential information while in a fiduciary relationship only to utilize that same information against that client, is manifest. A consultant should not be rewarded with financial gain as a result of an obvious conflict of interest. This issue, along with the above items, should also be reviewed.

If you have any questions with regard to the foregoing, please feel free to telephone the undersigned. Thank you for your consideration of our comments.

Sincerely,

BEWLEY LASSLEBEN & MILLER LLP

JOSEPH A. VINATIERI, ESQ.
Direct Line: 562.907.2028
Direct Fax: 562.907.2019
e-mail: joseph.vinatieri@bewleylaw.com
JAV:dm
Enclosures

cc: Jeffrey S. Baird

Robert E. Cendejas
Attorney at Law
1725 N. Juliet Ct.
Brea, CA 92821

Telephone (714) 256-9595
Mobile Telephone (213) 361-0642
Facsimile (928) 396-1292
E-mail: Robertecendejas@aol.com

VIA E-MAIL: Susanne.Buehler@boe.ca.gov
Lynn.Whitaker@boe.ca.gov

January 20, 2011

Ms. Susanne Buehler
Acting Chief, Tax Policy Division
Sales and Use Tax Department
State Board of Equalization
450 N Street, MIC: 92
Sacramento, CA 95279-0092

RE: First BTC Meeting concerning
Regulations 1807 and 1828

Dear Ms. Buehler:

I attended the subject meeting on January 6, 2011 and offered comments on behalf of the cities of Long Beach and Ontario, as well as several others of my city and county clients. My clients have two serious concerns about the suggested changes argued for by Hinderliter de Llamas & Associates (HdL) and Mr. Johan Klehs.

I. Deny Future Allocations to Cities and Hold in Trust

The suggestion to modify subdivision (b) (7) has no merit and would cause turmoil to the yearly budgets of hundreds of cities every year. As summarized in the Board's Initial Discussion Paper: "if a written objection was filed by a notified jurisdiction, future distributions of local tax reported by the taxpayer identified in the petition will be placed in trust until the administrative process has been exhausted and a final decision rendered."

The substance of this suggested change is that any party who requests a reallocation, and loses at the first level of the appeal process, can tie-up the winning city's tax revenue for several years. This would cause a considerable hardship on hundreds of winning cities who have already included the revenue in their current budgets, and give the losing cities unwarranted leverage over the winning cities. This will cause the winning cities to have an immediate financial shortfall in their current budgeted year and require unnecessary budget cuts for the following years, until this matter is fully resolved.

The history of allocations over the past 30 years shows that there is no need to be concerned whether a city can "payback" an allocation which needs to be corrected. Furthermore, it is most likely that the "winning" party will ultimately win – and thus has been severely damaged needlessly for several years, unless it caves in to the demands of the losing party. At the January 6, 2011 BTC meeting, Board staff indicated that over the last 30 years there has been only two times that the Board staff has temporarily stopped the allocation to a city. I was the cities' attorney for one of these appeals. Eventually, after more than three years, the Board staff was completely reversed on all its proposed corrections. Further, Board staff could not recall even one incident of when a city was not able to "payback" its allocation. Clearly, this is a bad solution to a problem that does not exist.

Also, this suggested change has no merit because the "losing" party receives no benefit from the revenue being escrowed, unless you consider this to be a way for the "losing" party to gain leverage for itself to negotiate a favorable settlement. This in itself, is reason enough not to make the change.

Finally, it was suggested that the regulations could provide guidelines as to when Board staff should escrow city tax revenue. Again, this is unnecessary and has the potential for serious problems. I believe only the Board Members themselves should be able to take such drastic steps and only after a public hearing in which the city has the opportunity to show that it is unnecessary to escrow its tax revenue and the drastic results of doing so.

II. Required Disclosure of Revenue Sharing Agreement to Participate in Appeal Process

The proposed changes to subdivision (c) (3) and (d) (3) would require the disclosure of the contents of any revenue sharing agreement to all affected parties before the city or taxpayer could participate in the appeals conference or Board hearing. At the meeting, the proponents of this proposal felt it was necessary to make this a legal requirement in order to obtain the information and that it was important to the appeal process because it affected the credibility of the taxpayer's written responses to Board staff.

Both of these assertions are clearly false. First, the agreement is a public record so it can be obtained in 10 business days by making a request to the city under the Public Records Act. Also, Board staff has audit powers and can request any information it wants directly from the taxpayer.

The proponent's second assertion I find to be insulting to taxpayers, especially large corporations, who understand the consequences of committing fraud, falsifying documents and making misrepresentations in writing to the Board.

I also find it to be incredulous that the proponent of this change does not believe their credibility should be challenged even though it receives a large percentage fee for a minimum of two years, (but often for much longer), <u>but only</u> if it should be successful in identifying a correction.

Applying the proponents "credibility" test, any party who would benefit from the allocation or the reversing of the allocation has "questionable" credibility. However, this does not tell the whole story because there are severe consequences for any taxpayer who makes false written statements to the Board, but on these same matters, the proponent suffers no consequences for its false statements. Perhaps it should, so its statements would be as credible as the taxpayer's statements.

Conclusion

In summary, I believe these two proposals are not only completely unnecessary to the current appeal process, but are in fact very harmful to cities because they give the proponents seeking reallocation an unfair and dangerous power over the cities. The purpose of the regulation is to assist the Board in its administration of the cities' tax. Not to advantage others. Any issues of this nature, under the extreme unlikelihood that they should arise, has been and can continue to be sufficiently handled under the current law and the broad authority of the Board Members. The proposed changes do not serve the cities.

Respectfully submitted,

Robert E. Cendejas
Robert E. Cendejas

cc: Lynn Whitaker
Client Distribution List